

Members:

Sen. Richard Bray, Chair  
Sen. David Ford  
Sen. William Alexa  
Sen. Timothy Lanane  
Rep. Jesse Villalpando, Vice Chair  
Rep. Kathy Richardson  
Rep. Ralph Ayres  
Rep. Dale Sturtz



Lay Members:

Hon. Randall Shepard  
Hon. Ernest Yelton  
Mary Lou Schnell  
William Overdeer  
Sarah Taylor

LSA Staff:

Susan Preble, Fiscal Analyst for the Commission  
George Angelone, Attorney for the Commission

Authority: IC 33-1-15

## COMMISSION ON COURTS

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### MEETING MINUTES

Meeting Date: July 2, 1998  
Meeting Time: 10:00 A.M.  
Meeting Place: State House, 200 W. Washington St., Room 404  
Meeting City: Indianapolis, Indiana  
Meeting Number: 1

Members Present: Sen. Richard Bray, Chair; Sen. William Alexa; Sen. Timothy Lanane; Rep. Kathy Richardson; Rep. Ralph Ayres; Rep. Dale Sturtz; Honorable Randall Shepard; William Overdeer; Sarah Taylor.

Members Absent: Sen. David Ford; Rep. Jesse Villalpando, Vice Chair; Honorable Ernest Yelton; Mary Lou Schnell.

### Call to Order and Introductory Comments

Sen. Bray called the meeting to order at 10:09 a.m. After an introduction of the Commission members, Sen. Bray discussed the charges assigned to the Commission by the Legislative Council and the duties of the Commission under IC 33-1-15-7.<sup>1</sup> In addition to the restorative justice issue on the agenda for this meeting, 3 major subjects require consideration and input from the Commission: the bail bond system, the mechanic's lien law, and the consideration of requests for new courts/magistrates.

Sen. Bray reviewed the history of the mechanic's lien issue and observed that it is a complex subject. He said that Sen. Kenley attempted to rewrite the mechanics lien law 2 years ago, but despite all efforts, the parties involved could not reach any kind of compromise. Sen. Bray said that he hoped the time the Commission devotes to the issue improves the likelihood of success in bringing the parties together and ready to compromise.

Sen. Bray acknowledged that although each of the three issues warrant an entire meeting's discussion, there is a need to be fiscally responsible. Sen. Bray asked for suggestions from the members on the bail bonds and mechanics lien issues. The Commission members agreed that the need for new judicial officers is the Commission's first priority, the bail bond system is second, and the mechanics lien issue is last.

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<sup>1</sup>The charges of the Commission are contained in Legislative Council Resolution 98-2 and are as follows:

- "A. Study the bail bond system. (SCR 42)
- B. Examine the concept of restorative justice.(SB 15)
- C. Study mechanic's liens. (HB 1303 and SCR 55)."

## Restorative Justice

Sen. Bray introduced former Senator and Chairman of the Senate Judiciary Committee, Mr. Leslie Duvall. Mr. Duvall, representing the Justice Fellowship, began his presentation by advocating the continuation of the Commission on Courts beyond its current expiration date of June 30, 1999.

Mr. Duvall then distributed handouts which explain the Justice Fellowship is a faith-based organization whose mission is to promote biblical standards of justice, and its interpretation of restorative justice.<sup>2</sup> Mr. Duvall discussed the following points:

- The current paradigm of the criminal justice system is the state vs. the defendant. Restorative justice seeks the restoration of the entire community in the aftermath of crime, including the victim, the community, and the offender. The basic premise is to restore the victim and the community and involve the offender in the restoration. The concept is to bring "shalom", or peace.
- Restorative justice is an old concept which is currently receiving national attention as a solution to a broken criminal justice system. The community corrections system does incorporate some of these concepts through the administration of justice at the community level.
- The flaws in the current system include:
  - (1) prisons which have little effect on crime rates;
  - (2) little rehabilitation;
  - (3) no cost effectiveness; and
  - (4) the exclusion of victims from the process.
- The proper purpose of the criminal justice system is to incapacitate violent offenders and protect public safety.
- Despite the Victims' Compensation Fund, the constitutional amendment recognizing victims' rights, and the victim notification provisions in the Indiana Code, the victim is still largely ignored by the prosecutorial method.
- VORP (Victim Offender Reconciliation Program) is a good example of restorative justice. VORP involves voluntary participation by both the victim and the offender. It would be helpful if funding continues for community corrections to expand its use of VORP in Indiana.
- Restorative justice is receiving broad support across the nation:
  - The National Institute of Corrections conducts training and needs assessments.
  - The National Institute for Justice has implemented a pilot program to expand restorative justice to juvenile offenders.
  - In Minnesota, a full-time staff person in the Department of Corrections is assigned to develop restorative justice programs.
  - Vermont is an active player in the restorative justice movement, and has experienced a 70% decrease in recidivism since the implementation of their restorative justice efforts.
  - Indiana's own Department of Correction is supportive as well --- as evidenced by a recent newsletter devoted solely to restorative justice.
  - In Marion County, a restorative justice concept is being applied to some juvenile offenders through a program conducted by the Hudson Institute (especially the notion of family counseling as utilized in some New Zealand tribes).
- The benefits of restorative justice are:

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<sup>2</sup>Copies of the handouts distributed by Mr. Duvall are on file in the Legislative Information Center, Room 230 of the State House, Indianapolis, Indiana, 46204. The telephone number of the Legislative Information Center is (317) 232-9856.

- (1) lower cost;
- (2) lower recidivism rates; and
- (3) an increase in community healing (including victims and offenders).

Sen. Alexa asked about the applicability of restorative justice to violent crimes. Mr. Duvall responded by advocating that the process begin with easy cases, like juveniles and non-violent offenders. Mr. Duvall expressed his belief that in some cases it can be applied to violent cases, but does not recommend that Indiana take this approach.

Mr. Al Wengerd, Executive Director of the Center for Community Justice in Elkhart, Indiana, distributed copies of a restorative justice summary and testified as a practitioner of restorative justice for 20 years in Elkhart.<sup>3</sup> Mr. Wengerd discussed the following points:

- The Center has both public and private support, especially businesses because they recognize that paradigm shifting is essential for survival (can't do the same thing they did 20 years ago).
- The question to ask is: "who is the customer?". Now, the state's customer is the offender, but the other customers are victims and communities, whose needs are equally important.
- The Center runs 4 programs:
  - (1) Victim Offender Reconciliation Program
  - (2) Community Service Restitution Program
  - (3) Victim Impact Panel (which has decreased recidivism to 9% for drunk driving for a period of 3 years)
  - (4) Juvenile Reparation Program
- The idea behind these programs is to personalize crime. The system currently focuses on the basic facts constituting the crime, not what *really* happened. Victims lose more than property. An example of this loss is a case in Elkhart in which an elderly woman was traumatized by a robbery that occurred in her home. Two years after the robbery, the woman's life remained shattered. The judge on the case asked Mr. Wengerd if he could help the woman feel safe in her own home again. Mr. Wengerd recommended that new locks and security lights be installed and that the offender pay for them, along with the other restitution required by the court. The offender was released from prison into a very structured program, made restitution, went to college and has not committed more crime. However, the victim decided not to meet the offender face-to-face. The point is that victims are not vindictive, they just want justice.

Rep. Ayres asked if the restoration achieved is psychological or physical. Mr. Wengerd responded that both are achieved and explained that because victims need to know why a crime occurred and only the offender knows the real reason, victims are often psychological hostages. Mr. Wengerd stressed that restorative justice is not totally voluntary for offenders because the court orders it, and that closure is crucial for victims.

Sen. Alexa asked what legislation would be needed to implement restorative justice concepts. Mr. Wengerd commended the victims rights bill as a crucial step in the right direction and expressed support for the enactment of SB 15-1997. He added that restorative justice programs will establish what is not required now; an actual forum for victims. Mr. Wengerd indicated that restorative justice programs have been implemented in Madison, Marion, Monroe, Elkhart, and Porter Counties.

Mr. Wengerd stated that funding at some level would be needed. He explained that the Center's funding comes from a variety of diverse sources including: the Department of Correction through community corrections, the Criminal Justice Institute, federal victims assistance grants, United Way, County

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<sup>3</sup>A copy of Mr. Wengerd's handout is on file in the Legislative Information Center (see footnote 2).

Commissioners, private businesses and individuals. The Center is a United Way agency and its current budget is \$500,000 per year. Mr. Wengerd expressed a preference for such diversity of funding sources because it increases community ownership, and reflects the broad-based coalition required to make restorative justice work. He explained that the Center's Board of Directors is accountable to the Community Corrections Board, and that the Center has 14 staff members.

Rep. Sturtz asked if community service is part of the Center's programming. Mr. Wengerd answered affirmatively and said that its importance is that it connects offenders to the community, and a goal of the program is to help offenders become givers, not takers. Mr. Wengerd stressed that the idea behind restorative justice is not humiliation.

Sen. Bray asked if the community corrections concept is used exclusively with non-violent offenders. Mr. Wengerd responded that it is but that the Center has provided some mediation services in violent cases. Mr. Wengerd cited an example in which he met with a date rape victim five times before mediation occurred. He stressed it is extremely important not to coerce the victim's participation in any way.

Rep. Ayres recognized that Elkhart is not a small county, and asked what an adequate budget would be for a restorative justice program like the Center's in a county Elkhart's size. Mr. Wengerd stated that a \$750,000 annual budget would be ideal because it would allow staff to spend more time with victims. He cited the following statistics experienced by the Center:

95% of the victims and offenders come to agreement;  
92% of the victims involved in the Center's programs would do it again;  
85% of the offenders follow through on their contracts with victims.

Mr. Wengerd pointed out that with court-ordered restitution alone, the percentage of offenders that fulfill the terms of the restitution is much lower.

Rep. Sturtz asked about vandalism cases. Mr. Wengerd cited an example of a company owner who suffered \$1,500 of property damage by 3 juvenile offenders who vandalized a warehouse. The owner offered each a \$500 bond if they made the dean's list that semester, but required a \$500 payment from each who didn't. One made the dean's list and received the bond, the other two didn't and had to pay the victim. Mr. Wengerd commented that he is often surprised how caring and at the same time, confrontational, a community will be.

Sen. Bray wondered if restorative justice is more effective with younger offenders. Mr. Wengerd responded that it is because young offenders are often so self involved that they haven't thought about the consequences of their actions on others. He believes that restorative justice makes them see what effects their crimes have on their victims. He countered that in the traditional criminal justice system, when offenders come out of prison, they feel like victims, so they don't feel responsible for what they've done.

Larry Landis, Executive Director, Public Defender Council, testified in support of restorative justice and SB 15 -1997 and stated that public defenders are supportive of the Center's work in Elkhart County despite their initial trepidation, and confirm that the impact of restorative justice programs is strong. He recommended the establishment of a separate commission in order to explore the restorative justice concept more thoroughly. He also advocated that the 10% cash deposits collected by courts go toward restitution first, before being applied to court costs and fines. He also stated his belief that there are many places in the Indiana Code to inject the restorative justice model.

Sen. Alexa asked Mr. Landis if the proposed commission should be within the Department of Correction itself. Mr. Landis responded that the Department of Correction would be fine, and also suggested that it could be an independent commission outside the Department of Correction.

Mary Jo Metheny, a mediator for the juvenile court system in Marion County, testified about her amazement at the impact of restorative justice on young offenders. She explained that instead of going to the Girls' or Boys' Schools, mediation allows each person to speak and tell their story, which then makes retribution natural because the offender sees the justice in it.

## 1997 Weighted Caseload Statistics

Ron Miller, Statistical Analyst, Division of State Court Administration, distributed copies of the 1997 Weighted Caseload Statistics.<sup>4</sup> Mr. Miller discussed the following points:

- 1997 case filings decreased due to a decrease in infractions (by 11%), but because criminal filings increased by 1,000 the workload remained the same since felonies require more judicial time.
- The individual court statistics for counties with unified court systems may look strange because cases are frequently transferred between courts. For this reason, the county-wide statistics are probably a better gauge of the need for additional judicial officers.
- The “relative severity” factor spreads out a shortage or an excess of judicial officers among the current number of judicial officers in a county. A smaller number of current judicial officers absorbs more of an excess caseload than a larger number of existing judicial officers.

Sen. Alexa referred to the map on page 16 of the report and asked if it were possible to tally judicial need by districts or regions. Mr. Miller confirmed that it was possible and that he would be happy to put the information together in that format.

Chief Justice Shepard congratulated Mr. Miller on his work and his first seven months at the Division of State Court Administration. The Chief Justice stated that it was the best data ever produced for the purpose of determining the need for judicial officers, and especially liked the relative severity factor, a concept first discussed by Sen. Lanane during last year’s interim. Chief Justice Shepard felt the factor was the best way to accurately determine who needs additional judicial officers, because the need for one judge in a county with two judges is more important than in a five-judge county. He also stated the report confirms the need to develop an assignment system to even out discrepancies, which the Supreme Court intends to do, but recognizes that it will be a difficult endeavor.

The Chief Justice reminded the Commission that the burden on people coming to court is a direct reflection of the burden experienced by current judges. He stated that the impact is greatest on the public, which needs to be able to resolve important issues like child custody.

Mr. Miller stated that the jury trial rate is another important issue to address. He cited Lake County as appearing underutilized, but that the appearance is misleading due to the county’s high rate of jury trials, which require more court time.

Sen. Bray asked Mr. Miller to discuss the effectiveness of additional magistrates over new courts. Mr. Miller responded that they are counted equally for the purposes of the Weighted Caseload Study, but that magistrates may not have as many administrative duties as judges do. He also stated that for the purposes of the report, juvenile referees are counted as half a judicial officer, and juvenile magistrates are counted as one judicial officer.

Sen. Bray set the next two meetings for August 6, 1998 and August 20, 1998 at 10:00 a.m. in Room 404 to deal specifically with requests for additional judicial officers.

There being no further business, the meeting was adjourned at 12:15 p.m.

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<sup>4</sup>A copy of the 1997 Weighted Caseload Statistics report is on file in the Legislative Information Center (see footnote 2).